

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 87 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT ELECTRICITY BOARD

Versus

HEIRS OF VALA NAGA

Appearance:

MR TUSHAR MEHTA for the appellants.

UNSERVED for Respondents.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 05/10/96

ORAL JUDGEMENT

This appeal which is filed under section 100 of the Code of Civil Procedure, 1908, is directed against judgment and decree dated February 22,1995 rendered by the learned Extra Assistant Judge, Kutch-Bhuj in Regular Civil Appeal no.44/87 by which judgment and decree dated August 24,1987 passed by the learned Civil Judge (J.D.),

Anjar, in Civil Case no.108/81 have been reversed.

2. The substantial question of law formulated by the Court at the time of admitting second appeal is as under :-

"Whether on the facts and in the circumstances of the case, the decision of the Lower Appellate Court is correct in law in view of the decision of this Court in the case of Banuma Polytex Ltd. vs. Gujarat Electricity Board and another, 1996(1) G.L.R. 57 ?"

3. The above-referred to substantial question of law arises for consideration of the Court in the background of following facts:

The respondents are heirs of original plaintiff, who was resident of village Ambapur, Taluka : Anjar, District : Kutch. He was owner of a Wadi bearing survey no.356 at which electric supply was made available by the appellants. It was his case that on April 3,1981 at about 9.00 P.M. officers of the appellant no.1-Board had visited Wadi and taken away meter and meter box with them. The original plaintiff claimed that electric energy was cut off and on inquiry being made he was assured by the officers of appellant no.1-Board that supply of electricity would be restored after change of meter. According to the plaintiff, electric supply was not restored and without any good reason, electric connection was cut off. Under the circumstances, the original plaintiff instituted Civil Suit no.108/81 in the Court of learned Civil Judge (J.D.), Anjar and prayed to grant declaration that the action of the appellants in disconnecting electric supply was illegal. He also prayed to direct them by injunction to restore electric supply.

4. During the pendency of the suit, the plaintiff had moved an application exh.6 for interim relief. The Trial Court had directed the appellants to restore electric connection on plaintiff depositing the amount of Rs.2,830/- in the Court. It is an admitted position that the said order was complied with and electric connection was restored by the appellants.

5. The appellant contested the suit by filing written statement at exh.40 and controverted the averments made in the plaint. It was pleaded by the appellants that meter box and meter were tampered with, which indicated that the original plaintiff had committed theft of electric energy and, therefore, action of the appellants in snapping supply of electric energy was just

and legal. It was averred that after disconnection of electric supply, the original plaintiff was issued supplementary bill as per the rules and, therefore, the suit was not maintainable. By filing written statement the appellants demanded dismissal of the suit.

6. The Trial Court framed necessary issues for determination. During the pendency of the suit, the original plaintiff expired and, therefore, his heirs and legal representatives were brought on record. On behalf of the plaintiffs, evidence of Arjan Vala was recorded at exh.89; whereas the appellants examined (1) Lalchand Khubchand Asanani exh.93, (2) G.L.Gosai exh.96, (3) Mahadev Vela exh.97 and (4) Dinbandhu D.Majmudar exh.99. After taking into consideration oral and documentary evidence led by the parties, the learned Judge held that the plaintiffs failed to prove that the defendants had illegally disconnected electric supply. The learned Judge concluded that the original plaintiff had tampered with meter and meter box installed in Wadi and, therefore, the plaintiffs were not entitled to claim declaration as prayed for. The learned Judge also held that Court had jurisdiction to try the suit. In that view of the matter, the learned Judge dismissed the suit by judgment and decree dated August 24, 1987.

7. Feeling aggrieved by the said decree, heirs of the original plaintiff preferred Regular Civil Appeal no.44/87 in the District Court, Kutch at Bhuj. The learned Extra Assistant Judge, Kutch at Bhuj, who heard the appeal, took into consideration the sworn testimony of Lalchand Khubchand Asnani exh.93 as well as Dinbandhu Dhananjay Majmudar exh.99 and concluded that their testimony did not indicate that the meter was tampered with. The learned Appellate Court also took into consideration the evidence of Panch witnesses Gaurigar Lalgar Gosai exh.96 as well as Mahadev Vela exh.97 and noted that they had not supported the say of Lalchand Khubchand Asnani exh.93 regarding meter having been tampered with and, therefore, the contents of panchnama exh.100 were not reliable. On appreciation of evidence, the learned Judge held that the appellants failed to prove that the original plaintiff had committed theft of electric energy and, therefore, the appellants were not justified in disconnecting electric supply. The learned Judge also took the view that as the original plaintiff was not served with a notice before disconnection, the action of the appellants in disconnecting the electric supply of the plaintiff was bad in law. Having regard to the above referred to conclusions, the Appellate Court allowed the appeal and

decreed the suit,giving rise to the present appeal.

8. It is true that in the case of BANUMA POLYTEX LTD.(supra) this Court has taken the view that Condition no.34 of the Conditions and Miscellaneous Charges of Supply of Electric Energy does not prescribe service of a notice before disconnection. What is emphasised by the Court therein is that a party resorting to mala-practices cannot be permitted to invoke doctrine of fair play. Therefore, the conclusion arrived at by the learned Appellate Judge to the effect that the action of the appellants in disconnecting the electric supply of the original plaintiff without issuing notice to the original plaintiff, is bad in law, cannot be upheld and is liable to be set aside. However, even if said conclusion of the learned Appellate Judge is set aside, it would not make any difference so far as the ultimate conclusion which is arrived at by the Appellate Court is concerned, because the learned Appellate Judge, on appreciation of evidence, has held that the appellants failed to prove that the original plaintiff had committed theft of electric energy and, therefore, were not entitled to disconnect the electric supply.

9. The finding recorded by the learned Appellate Judge that the appellants failed to prove that the original plaintiff had committed theft of electric energy is based on appreciation of testimony of (i) Lalchand Khubchand Asnani exh.93, (ii) Dinbandhu Dhananjay Majmudar exh.99, (iii) Gaurigar Lalgari Gosai exh.96, (iv) Mahadev Vala exh.97 and the contents of panchnama exh.100. The learned Judge noticed that both the Engineers examined on behalf of the appellants had stated that by inserting a stick, meter could be stopped from operating, but in the panchnama it was not mentioned that such a stick was found at the time of inspection of the meter. The learned Judge also noticed the fact that the panch witnesses who were allegedly present at the time when the meter was inspected, did not support the say of any of the Engineers examined by the appellants and did not refer to any stick having been inserted in the meter at the time of inspection. The learned Appellate Judge also took into consideration the contradictions appearing in the evidence of witnesses examined by the appellants and thereafter a finding was recorded that the appellants failed to prove that the original plaintiff had committed theft of electric energy. The finding that the original plaintiff had not committed theft of electric energy is essentially a finding of fact not liable to be disturbed in Second Appeal. While admitting the second appeal, no substantial question of law is formulated by the Court as

to whether the finding recorded by the first appellate court to the effect that the appellants have failed to prove that the original plaintiff had committed theft of electric energy, is bad in law. It is not pointed out on behalf of the appellants that appreciation of evidence of witnesses and documents made by the first appellate court is erroneous in any manner. Under the circumstances, the finding that the original plaintiff did not commit theft of electric energy will have to be upheld. If that finding is upheld, then it hardly needs to be emphasised that the appellants had no right to disconnect electric supply and, therefore, no exception can be taken to the decree passed by the first appellate court.

10. In view of the above discussion, the substantial question of law which is formulated for determination of the Court is answered in negative and in favour of the appellants, but in view of the other findings recorded by the first appellate court, the appeal will have to be dismissed.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed, with no order as to costs.

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